THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25680 OF 2005

DATED:13.12.2005

Between:

Smt. Vurukuti Kondamma

…Petitioner

And

The Visakhapatnam Municipal Corporation

Rep. by its Commissioner, Visakhapatnam

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.25680 OF 2005

ORDER:

The petitioner is wife of late Venkat Rao. It appears, he succeeded to the property bearing D.No.61-4-44 in S.Nos.9/15 and 10/6 of Venkannapalem, Malkapuram, Visakhapatnam District. After death of husband, petitioner inherited to the same. The petitioner alleges that in 1994 when the respondent Corporation made attempts to lay a road on 12' passage, late Venkat Rao filed O.S.No.55 of 1994 on the file of the Court of IV Additional District Munsif, Visakhapatnam, for permanent injunction. The suit was decreed on 29.8.1997 inter alia directing the respondent not to interfere with the possession and enjoyment of the petitioner's property except under due process of law. The petitioner now alleges that the respondent Corporation again is attempting to encroach upon 12' passage to lay a public road. The petitioner got

issued notice dt.30.7.2005, in vain. It is further alleged that on 14.11.2005 the officials of the respondent corporation demolished structures adjacent to the 12' passage informing that they wanted to lay a public road. Hence, the Writ Petition.

At the stage of admission itself, the respondent Corporation has filed a detailed counter affidavit. While denying various allegations made in the petitioner's affidavit, it is stated that the 12' passage is a public road even before petitioner's husband filed O.S.No.55 of 1994. It is further stated that the petitioner and her family members sold some extent of land to one K.Chandra Rao. During the life time of petitioner's husband, it appears, he filed O.S.No.1432 of 1988 on the file of the Court of II Additional District Munsif, Visakhapatnam, against Chandra Rao, for permanent injunction, but the same was dismissed. In the schedule of the property sold to Chandra Rao, the southern side boundary is shown as 12' passage. Chandra Rao also filed O.S.No.620 of 1993 when Venkat Rao, petitioner's husband, tried to encroach upon the road and the same was decreed on 7.7.1997 restraining Venkat Rao from putting up any structures on the road to the northern side of Chandra Rao property. The first appeal, being A.S.No.277 of 1997 was also dismissed on 20.8.1998. It is therefore asserted that the petitioner has no manner of right or interest in respect of 12' wide road. It is alleged that the petitioner is guilty of suppressing the facts and therefore the Writ Petition is liable to be dismissed. It is further stated that the respondent Corporation proposed to construct a drain at Venkannapalem where 12' road is located to prevent stagnation of sullage water. The site in question has come under public utilization since several years and the same is not private property and the petitioner has no right to claim the same.

Learned counsel for the petitioner, Sri G.Rama Gopal, submits that when the Corporation desires to declare a private passage way as public street, a notice in writing has to be put up in any part of the said street and in the absence of the same, the respondent Corporation cannot be permitted to lay the road. He further submits that the Decree in O.S.No.55 of 1994 filed by the petitioner's husband having become final, the respondent is not precluded from laying the road. **Per contra**, learned Standing Counsel for Visakhapatnam Municipal Corporation, Sri N.Ranga Reddy submits that the petitioner has come to this Court with unclean hands and the Writ Petition is liable to be dismissed. Secondly, he would urge that by reason of the judgment and decree in O.S.No.620 of 1993, as affirmed in A.S.No.277 of 1997, the petitioner or her husband have no right and therefore she cannot file present Writ Petition. Lastly, the learned Standing Counsel submits that Chandra Rao has addressed a letter to the District Collector requesting to prevent any illegal construction of 12' wide passage and for construction of road on the 12' wide passage. In support of this submission, learned Standing Counsel has filed before this Court the relevant file.

The submission that prior notice is mandatory before declaration of a private street as public street is misconceived. A plain reading of Section 395 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act) does not support any such eventuality. What all Section 395 lays down is that when the owner of a private street requests, the Commissioner may declare it to be public street by ensuring that lamp posts are installed. The declaration of private street as public street by the

Commissioner shall attain finality after a notice is displayed in any part of the street. No prior notice as such is required under Section 395 of the Act. In this case, as pointed out by the respondent Corporation, Chandra Rao, who succeeded in the suit filed against the petitioner's husband with respect to 12' passage on the northern side of his property himself requested the Corporation for declaration/conversion of 12' passage as public street. In that view of the matter, this Court does not find any infirmity even if the Corporation takes up any action in relation to 12' feet passage. The counter affidavit discloses that there has been litigation between petitioner's husband and the Corporation, as well as petitioner's husband and Chandra Rao. Curiously, the petitioner has withheld the information from this Court with regard to litigation between her husband and Chandra Rao. Applying the principle *supressio veri suggestio falsi* the petitioner should be denied any relief. It is well settled that the discretion under Article 226 of the Constitution cannot be exercised in favour of a person who does not approach the Court with clean hands and who makes attempt to obtain favourable orders by withholding the material facts and relevant information. Further, the petitioner has not placed any material before this Court that 12' passage is private property belonging to her or other co-sharers.

The Writ Petition is misconceived and is accordingly dismissed.

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(V.V.S.RAO, J)

13.12.2005

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